

Diane Hajek

From: William Clague
Sent: Friday, February 23, 2018 11:04 AM
To: Ava Ehde
Cc: Mitchell Palmer; Alex Nicodemi; Kathy Cremaschi; Dan Wolfson; Juliet Shepard
Subject: Beneficiary Trust Estate -- Central Library; RLS-2018-0057
Attachments: R11-058.pdf

Ava:

Pursuant to the above Request for Legal Services you have asked for guidance as to "any necessary procedures for [the] distribution [to the] County of available funds from [the] Lois J. Flagg Trust." I provide the following legal advice in response:

1. The Trust provides for distribution of certain proceeds of the estate of Lois Flagg "to MANATEE COUNTY CENTRAL LIBRARY, . . . to be used for its funding purposes." In order to complete the distribution of the proceeds, the attorney representing the Trust has asked the County to complete a form providing beneficiary information and an IRS Form W-9.
2. The Board has authorized the acceptance of gifts to the County—such as the distribution of Trust proceeds—pursuant to Resolution R-11-058 (copy attached). That resolution authorizes the County Administrator to accept gifts of less than \$10,000. For gifts of \$10,000 or more, a Board resolution authorizing the acceptance of the specific gift is required. Depending upon the value of the Trust proceeds to be distributed to the County, a separate resolution may or may not be required.
3. As treasurer and budget officer to the County, the Clerk has sole authority and responsibility to receive and account for the Trust proceeds. I have consulted with Kathy Cremaschi, Assistant Chief Financial Officer to the Clerk, and she has informed me that the Treasury Management section of the Clerk's Office has protocols in place for completing the necessary forms and providing the banking information for acceptance of Trust proceeds (once the acceptance of them has been authorized).
4. You have also asked whether the County must use the Trust proceeds for only the Central Library, or whether Trust proceeds can be used to fund "general library operations". The above quoted language from the Trust Agreement indicates an intent to direct the proceeds to the funding of the "Central Library", not the general library operations of the County. If the County accepts the distribution of Trust proceeds, it will be required to use them solely for that purpose, absent declaratory relief from the Courts to allow them to be used more broadly.

This concludes my response to the RLS. Please contact me if you have any questions or concerns.

Bill Clague
Assistant County Attorney
Manatee County, Florida
ph. 941-745-3750
fx. 941-749-3089
william.claque@mymanatee.org

RESOLUTION NO. 11-058

A RESOLUTION OF MANATEE COUNTY, FLORIDA, PROVIDING FOR THE ACCEPTANCE OF GIFTS OF REAL, PERSONAL AND INTANGIBLE PERSONAL PROPERTY; PROVIDING THAT NO GIFT OF REAL, PERSONAL OR INTANGIBLE PERSONAL PROPERTY SHALL BE ACCEPTED EXCEPT IN ACCORDANCE WITH THE PROVISIONS OF THIS RESOLUTION; PROVIDING FOR THE DEVELOPMENT OF ADMINISTRATIVE PROCEDURES FOR THE ACCEPTANCE OF GIFTS OF PERSONAL PROPERTY WITH A VALUE BELOW \$10,000; PROVIDING FOR THE DEVELOPMENT OF ADMINISTRATIVE PROCEDURES NECESSARY FOR THE IMPLEMENTATION OF THIS RESOLUTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 125.01, Fla. Stat., and the Florida Constitution, the Board of County Commissioners of Manatee County has the power to carry out County government to the extent not inconsistent with general or special law, to adopt ordinances and resolutions necessary for the exercise of its powers, and to perform any act, not inconsistent with law, which is in the interest of the people of the County; and

WHEREAS, pursuant to Section 125.012(3), Fla. Stat., the Board of County Commissioners wishes to establish the terms and conditions whereby Manatee County may accept gifts of real property, intangible personal property and other personal property; and

WHEREAS, the Board of County Commissioners desires to establish, with clarity, Manatee County's title, obligations, responsibilities and liabilities with respect to property of any nature given to or donated to the County; and

WHEREAS, the Board of County Commissioners desires to repeal Ordinance 86-5 by separate ordinance [Ord. No. 11-12] and substitute that ordinance with this resolution; and

WHEREAS, it is necessary and in the best interest of Manatee County that potential donors, the County Tax Collector and Property Appraiser, and the public in general, be advised of what property has been accepted by Manatee County; and

WHEREAS, it is necessary and in the best interest of Manatee County that proper records are kept of all property owned by Manatee County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MANATEE COUNTY, FLORIDA, AS FOLLOWS:

Section 1: Procedure for acceptance of gifts.

(a) For the purposes of this section, certain words and terms shall be defined as follows:

Intangible personal property means all personal property that is not intrinsically valuable but derives its chief value from that which it represents; and shall include, but not be limited to, money, stocks or shares in a business and all notes, bonds or other obligations to pay money.

Personal property shall include, but not be limited to, all goods, chattels, wares, merchandise, supplies, raw materials, products and partially finished products, fuels, energy sources and supplies, vehicular items, floating structures or any article, with or without value, not otherwise identified as real property or intangible personal property, or specifically excluded from this section.

Property shall include all real property, intangible personal property, or personal property, as defined below.

Real property shall refer to any land, buildings, fixtures and all other improvements to land or any interest in land, buildings, fixtures or any improvements to land, except construction easements, for a period of one year or less, which are specifically excluded from this section.

(b) The Board of County Commissioners is hereby authorized, in its discretion, to accept gifts of property deemed necessary and useful in the fulfillment of the County's purposes. Such property shall only be used for the purpose of carrying out legally authorized objectives and functions of the County.

(c) A gift of any real property, intangible personal property, or personal property valued at ten-thousand Dollars (\$10,000) or more shall not be deemed accepted until formally accepted by resolution, approved by the County Attorney for form and legal sufficiency, or by other formal action of the Board of County Commissioners identifying with specificity the property and, where appropriate, the account to which it will be credited, or an inventory control number assigned to such property. Where conditions or limitations on use have been attached to such property, or a reversionary or other interest maintained in any such property, the resolution or action of the Board shall set forth such limitations and interests. A copy of any resolution or notice of any formal action of the Board of County Commissioners accepting a gift of real property shall be forwarded to the office of the Tax Collector and Property Appraiser for the County.

(d) The County Administrator is authorized to develop administrative procedures for accepting gifts of personal property valued at less than ten-thousand Dollars (\$10,000). Such procedures shall identify the manner in which such gifts may be accepted and shall include reports to the Board entered into the official records of the County which identify the personal property with a value under ten-thousand Dollars

(\$10,000), its physical location, and the department, office or agency to which it has been assigned.

(e) This section shall not apply to the conveyance of any property to the County where only nominal consideration is paid or to be paid, or where such property is accepted or conveyed in accordance with any other procedures established by resolution, ordinance or statute, or where the property and the County's interest in the property is identified in an agreement approved and executed on behalf of the Board of County Commissioners.

(f) The County Administrator is authorized and directed to develop any administrative procedures necessary for implementing this section and informing all affected officials and employees of the terms of this section.

(g) Failure to comply with the terms of this section shall not divest the County of any right, title or interest in any property given or dedicated to the County prior to the effective date of this section.

Section 2: Severability. If any section, sentence, clause, phrase or provision of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this ordinance.

Section 3: Repeal. All prior resolutions inconsistent with this resolution are repealed insofar as such inconsistencies exist.

Section 4: Effective Date. This resolution shall take effect immediately upon enactment by the Board of County Commissioners.

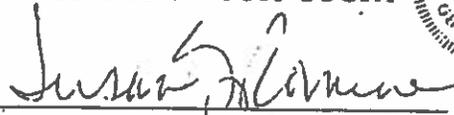
PASSED AND DULY ADOPTED, in open session, with a quorum present and voting, the 29 day of March, 2011.

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

By: 
Chairman

Attest:

R.B. SHORE
CLERK OF THE CIRCUIT COURT

By: 
RF

